

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  UKI COMMUNICATIONS, INC.,  Respondent.	DOCKET NOS. FCU-02-27 FCU-03-23 FCU-03-41
---	---

**ORDER MODIFYING PROCEDURAL SCHEDULE  
AND CHANGING HEARING DATE**

(Issued May 5, 2004)

On April 26, 2004, the undersigned issued a procedural order and notice of hearing setting the hearing in this case for June 8, 2004. On April 28, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request for modification of the procedural order.

First, the Consumer Advocate requested that ordering clause one of the April 26<sup>th</sup> order be expanded to require UKI Communications, Inc. (UKI) to file a response to the petitions in Docket Nos. FCU-03-23 and FCU-03-41 no later than May 10, 2004. The Consumer Advocate stated that prior Board orders issued January 20, 2004, required UKI to file a response in Docket No. FCU-03-23 by February 16, 2004, and requested UKI to file a response in Docket No. FCU-03-41 by February 23, 2004. The Consumer Advocate further stated that this

requirement/request has been ignored by UKI, and response would serve the purpose of framing the issues and facilitating preparation for hearing. The Consumer Advocate stated that, under the current procedural order, no response is required from UKI until it is required to file its brief and testimony on June 1, 2004, one week before the hearing. The Consumer Advocate stated that in Docket Nos. FCU-03-23 and FCU-03-41, responses are currently past due and should be required now.

Unless specifically modified, previously issued orders by the Board and the undersigned administrative law judge remain in effect, and the requirements do not need to be restated in subsequent orders. This is true even if a party has not complied with the previous order at the time of issuance of a subsequent order.

On January 20, 2004, in Docket No. FCU-03-23, the Board ordered UKI to file a response to the Consumer Advocate's petition. On February 3, 2004, apparently in response to the January 20, 2004, Board orders issued in Docket Nos. FCU-03-23 and FCU-03-41, UKI filed a letter with the Board that stated, among other things, that it would be discontinuing intrastate toll service for all of its commercial and residential customers located in Iowa. The letter did not specifically respond to the allegations in the petitions filed by the Consumer Advocate, and is therefore inadequate to meet the requirement in the Board's order in Docket No. FCU-03-23. The Board's requirement that UKI file a response to the allegations in the Consumer Advocate's petition remains in effect and there is no need to restate it in a subsequent procedural order. Therefore, the undersigned declines to modify the procedural order to require a response by May 10, 2004, because a response that addresses the allegations in the petition in FCU-03-23 is already due.

In an order issued January 20, 2004, in Docket No. FCU-03-41, the Board requested UKI to file a response to the Consumer Advocate's petition, but did not require it. Therefore, even if UKI had filed nothing, it cannot be said that a response is past due. In FCU-03-41, the Consumer Advocate filed the petition to commence this proceeding to impose a civil penalty. In this situation, it is appropriate for the Consumer Advocate to file the first round of testimony. While a more complete response to the allegations in the petition from UKI would undoubtedly be helpful to the Consumer Advocate, it does not appear that the Consumer Advocate cannot file prepared testimony without it. Since the Board invited UKI to file a response but did not require one, the undersigned will not modify the Board's order.

Second, the Consumer Advocate requested the opportunity to file rebuttal testimony, and asked for a modification of the procedural schedule to provide for this. The Consumer Advocate's request for the opportunity to file rebuttal testimony should be granted, and the procedural schedule will therefore be modified and the hearing date will be changed to accommodate this request.

**IT IS THEREFORE ORDERED:**

1. The Consumer Advocate's request to modify the procedural order to include the requirement that UKI file a response to the petitions in Docket Nos. FCU-03-23 and FCU-03-41 by May 10, 2004, is hereby denied.

2. The Consumer Advocate's request to modify the procedural order to allow it the opportunity to file rebuttal testimony is hereby granted. If the Consumer Advocate wishes to file rebuttal testimony, it must do so on or before June 8, 2004.

3. The hearing set for June 8, 2004, is hereby cancelled. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Tuesday, June 15, 2004, beginning at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at 1-515-281-5256 no later than five days prior to the hearing date to request that appropriate arrangements be made.

4. All other aspects of the procedural order and notice of hearing and order deferring judgment on motion for default issued on April 26, 2004, remain in effect.

5. A copy of this order will be delivered to the Consumer Advocate and sent by ordinary U.S. mail to UKI. In addition, a copy of this order will be sent via electronic mail to [juancamilo@ukicomcommunications.com](mailto:juancamilo@ukicomcommunications.com) and to [monica@ukicomcommunications.com](mailto:monica@ukicomcommunications.com).

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 5<sup>th</sup> day of May, 2004.